

**ORDER NO. 78757**

IN THE MATTER OF THE APPLICATION * OF WASHINGTON GAS LIGHT * COMPANY FOR AUTHORITY TO * INCREASE EXISTING RATES AND * CHARGES FOR GAS SERVICE AND TO * IMPLEMENT AN INCENTIVE RATE * PLAN.	*	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND <hr style="width: 100%;"/> CASE NO. 8959 <hr style="width: 100%;"/>
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This matter comes before the Commission on Appeal from the Proposed Order ("Proposed Order") of Hearing Examiner issued on September 11, 2003. Washington Gas Light Company ("WGL" or the "Company") filed its Notice of Appeal/Clarification and Memorandum on Appeal on September 23, 2003. The Office of People's Counsel ("OPC") filed its Appeal of the Proposed Order of the Hearing Examiner on September 23, 2003. Also on that date, the Staff of the Public Service Commission ("Staff") filed its Notice of Appeal and Memorandum on Appeal. Reply Memoranda on Appeal were filed on September 29, 2003, by WGL, OPC, and Staff.

The appealing parties challenge only selected portions of the Proposed Order. The Commission affirms and adopts all unchallenged portions of the Proposed Order, for the reasons stated in the Proposed Order, and decisions on unchallenged portions of the Proposed Order will not be restated here. A description of the procedural history and factual background of the case is presented in the Proposed Order and will not be repeated.

This Order will only discuss the issues appealed by the parties. Appeal issues will be addressed in the same order as presented in the Proposed Order.

I. Rate Base

A. Post Test Year Additions to Plant in Service

The Proposed Order accepts two of WGL's proposed adjustments to rate base for post test-year additions to plant in service. The accepted plant additions include the System Deliverability project (Brandywine Pipeline and associated pressure reducing stations) and the Storage and Pumping project (Westmore City Gate Station), for a total adjustment of approximately \$5 million in additional plant.<sup>1</sup> A third post test-year plant addition, associated with the Patuxent River Naval Air Station and valued at \$1,874,000, was unopposed by the parties and was accepted in the Proposed Order.<sup>2</sup> The balance of WGL's proposed post test-year additions to plant, totaling approximately \$21 million, were rejected.<sup>3</sup>

On appeal, WGL requests that approximately \$3 million worth of distribution system replacement plant, which the Company claims was installed and in service prior to June 30, 2003, be reflected in the development of rate base. WGL argues that this project meets the criteria for inclusion in rate base as set out in the Proposed Order. Specifically, WGL argues that the project represents replacement plant that does not generate

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<sup>1</sup> Proposed Order at 6, 8.

<sup>2</sup> Id. at 5, at 5, footnote 5, and at 8.

<sup>3</sup> Id. at 6, 8.

incremental revenue (creating no mismatch between revenues and expenses), and also argues that the expenditures are now known and measurable rather than estimates.

The documentary evidence to support WGL's position with respect to this \$3 million plant addition was not presented in any pre-filed testimony submitted by WGL. In fact, WGL's putative evidence was not proffered until the final day of the hearing. The Commission affirms the decision in the Proposed Order to exclude this evidence since late admission would have denied the parties a fair opportunity to review the evidence.

The Hearing Examiner allowed the filing of new evidence by WGL as late as August 1, 2003. Evidence on replacement plant put into service on June 30, 2003, could have been submitted timely, in order to make WGL's case on this issue, while providing an opportunity for the other parties to evaluate the evidence. Since the record does not contain evidence upon which to determine whether the \$3 million replacement plant addition enhances the system, it must be excluded from rate base.

WGL also argues on appeal that the Proposed Order's inclusion in rate base of the expenses associated with the three post test-year projects (Brandywine Pipeline, Westmore City Gate Station, and Patuxent River Naval Air Station) requires increases to depreciation<sup>4</sup> and property tax expense. OPC counters on reply that the Proposed Order's inclusion of the three post test-year projects, without allowance for depreciation and property tax expense, is "more than fair to WGL,"<sup>5</sup> since post test-year growth in depreciation on embedded plant and growth in the balance of accumulated deferred income

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<sup>4</sup> WGL's proposal would also increase accumulated depreciation in rate base as an offset to depreciation expense.

<sup>5</sup> OPC's Reply Memorandum at 9.

taxes are not recognized. While the Commission affirms the inclusion in rate base of the three post test-year projects, the Commission agrees with OPC and declines to include any corresponding increases to depreciation and property tax expense.

B. Construction Work in Progress ("CWIP")

Allowance for Funds Used During Construction ("AFUDC") is an accounting convention used to offset a current return provided when Construction Work in Progress is included in the development of rate base. Typically, AFUDC is reflected as an adjustment to operating income. The Proposed Order includes CWIP in rate base with an AFUDC offset of \$139,000. Staff argues that the \$139,000 amount provides insufficient offset to the level of CWIP included in rate base. Having reviewed the relevant information in the record, the Commission concurs with the development of AFUDC as set forth in the Proposed Order. The \$139,000 offset is consistent with the level of CWIP accruing AFUDC. Staff's appeal on this issue is denied, and the Proposed Order is affirmed.

C. Encoder, Recorder, Transmitter ("ERT") Equipment

During the pre-hearing phase of this proceeding, OPC identified an error in WGL's filing that double-counted ERT Equipment by including this equipment in both distribution plant and general plant.<sup>6</sup> WGL responded to OPC's criticism by correcting the error in a revised filing. In this revised filing, WGL corrected the error by revising its data for nine months, rather than twelve, since its review of the error found that the double counting only occurred for nine months. The Proposed Order found that the nine-month double-

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<sup>6</sup> Proposed Order at 13, referring to WGL Witness Raab's Direct Testimony and OPC Witness Effron's initial testimony.

count correction was proper and that the Company's revised figures were accurate. On appeal, OPC maintains that a twelve-month correction was required. The Commission affirms the Proposed Order's finding that the initial double-count of the ERT equipment was a nine-month error, which has been properly corrected, and denies OPC's appeal.

## II. Operating Income

### A. Labor Expense

The Commission accepts as fair and reasonable the work force adjustment in the Proposed Order increasing operating income by \$385,000.<sup>7</sup> In doing so, the Commission rejects OPC's request that it accept the full adjustment proffered by OPC, and also rejects the Company's argument that the Proposed Order's reduction in employee count is too severe.

The Commission finds that the Proposed Order appropriately determines the number of employees for rate-making purposes during the rate-effective period. The Hearing Examiner weighed evidence of a decline in employees throughout 2002 and in the first four months of 2003, against evidence that employee counts may increase after losses from retirements in the early months of the year.<sup>8</sup> On the basis of the evidence, the Proposed Order found that an adjustment reflecting a reduction in test-year employees equal to one-half of the difference in the average number of employees through April of

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<sup>7</sup> Id. at 16.

<sup>8</sup> Id. at 15-16.

2003, should be made.<sup>9</sup> The Commission finds this reasoning to be sound, and will not disturb the finding of the Proposed Order.

B. Employee Activity Costs

The Commission rejects Staff's appeal that employee activity costs are not a proper business expense, and accepts the adjustment in the Proposed Order. The Commission agrees with the finding in the Proposed Order<sup>10</sup> that a modest amount of such costs for appropriate purposes are a reasonable and proper business expense. Discretionary company-sponsored employee activities can boost employee morale and thereby increase employee productivity. The Commission finds that the Company's employee activity costs are both modest and reasonable.

C. Depreciation Expense

The Proposed Order authorized the Company to file revised tariffs to reflect the outcome of Commission Case No. 8960, *In the Matter of the Application of Washington Gas Light Company for Review and Approval of Changes in its Gas Depreciation Rates*.<sup>11</sup> The Proposed Order also cited two cases<sup>12</sup> in which the Commission permitted second-stage rate increases for plant that came into service after new rates went into effect pursuant to a rate case. The Proposed Order authorized the filing of revised tariff sheets to reflect any changes in the revenue requirement that result from the decision in Case No. 8960.<sup>13</sup> Changes authorized under the Proposed Order would include a change in the

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 18.

<sup>11</sup> *Id.* at 29. A final order in Case No. 8960 is expected in early Spring 2004.

<sup>12</sup> *Id.* at 28-29. The cases are: *Re Potomac Edison Company*, 76 Md. PSC 451 (1985), and *Re Baltimore Gas and Electric Company*, 81 Md. PSC 534 (1990).

<sup>13</sup> *Id.* at 29.

annual depreciation expense and a corresponding change to rate base because of the change in the depreciation reserve, as well as an earnings test to verify that earnings do not completely cover the increased depreciation expense.<sup>14</sup>

OPC argues on appeal that the results of Case No. 8960 should be implemented within a future rate case, rather than after the fact in this rate case, and draws a distinction between a depreciation case and the second-stage rate cases discussed and relied upon in the Proposed Order. Both Staff and WGL argue that the earnings test aspect of the Proposed Order should be overturned.

The Commission affirms the Proposed Order with respect to the implementation of the outcome of Case No. 8960 regarding the changes to annual depreciation expense and rate base, but declines to impose the earnings test. The Commission is mindful of the administrative burdens that would be created if another rate case had to be litigated on the heels of this one simply to fold the results of Case No. 8960 into the rate-making equation. A depreciation order will be issued during the rate-effective period, which means that any additional changes that are made will be related to the evidentiary foundation of the rates initially set here, in Case No. 8959. The Commission approves the Hearing Examiner's proposed treatment of depreciation in connection with Case No. 8960, and determines that this treatment will appropriately and reasonably address anticipated depreciation expense in this rate case.<sup>15</sup>

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<sup>14</sup> Id., and Id. at footnotes 16, 17.

<sup>15</sup> The Commission observes that the practice of allowing second-stage rate changes to recognize post test period changes in revenues and expenses should generally be avoided in rate-making proceedings, and there should be no expectation that this practice will become the norm.

Both Staff and WGL agree that the results in Case No. 8960 can result in changes in either direction. Depreciation rates may increase or decrease, and, thus, income may also increase or decrease. The Commission concurs that both possibilities exist. The Commission directs that the base rates that flow from income changes, as a result of the depreciation rate decisions in Case No. 8960, be implemented regardless of the direction of the effect upon base rates.

The Commission will not condition any changes to base rates pursuant to the outcome of Case No. 8960 on the earnings test recommended in the Proposed Order. Given the temporal proximity of this case and Case No. 8960, the extra administrative step of the earnings test is unnecessary. The Commission accepts OPC's recommendation to set a July 1, 2004, deadline for the implementation of any changes because of the depreciation case.

Finally, WGL requests clarification that new accruals for depreciation (at new rates set in Case No. 8960) will not have to be booked until after WGL receives authorization to change the rate charged to customers. The Commission confirms that new accruals shall not be booked until after the rate change to customers is put into effect. The Commission orders WGL to file revised tariff sheets in order to implement any necessary rate changes. These revised tariff sheets shall be filed and considered for acceptance for filing at an Administrative Meeting of the Commission.

#### D. Incentive Compensation Payments

After careful consideration of the arguments, the Commission rejects Staff's request to reduce WGL's proposed incentive compensation expense. While Staff



compares this proposal to the Commission's treatment of an incentive compensation proposal in Case No. 8829,<sup>16</sup> the present case is different since WGL's incentive compensation proposal includes criteria that directly benefit ratepayers. The record indicates that customer satisfaction, safe operation, and efficiency in delivery of services are among the criteria that are evaluated before incentive payments are made under the WGL proposal.

More importantly, the Commission agrees with the Hearing Examiner's conclusion that the total amount of executive compensation proposed, including the incentive component, is in line with that offered by similar companies for similar positions.<sup>17</sup> Therefore, since the total compensation package is set at or below the market level,<sup>18</sup> the Commission finds that the inclusion of incentive payments as part of compensation is reasonable. The Commission further finds that basing a portion of certain employees' compensation upon an incentive component, instead of replacing it with an equivalent increase in base pay, is preferable and is beneficial to ratepayers. Accordingly, the Commission accepts the Company's proposed adjustment for incentive compensation payments as approved in the Proposed Order.

#### E. Public Liability Insurance Premiums

The Commission agrees with the Hearing Examiner that the projected level of expense for the Company's public liability insurance premiums is reasonable and well supported by the evidence.<sup>19</sup> In doing so, the Commission rejects Staff's arguments that

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<sup>16</sup> *Re Baltimore Gas and Electric Company*, 91 Md. PSC 240, 243-244 (2000).

<sup>17</sup> Proposed Order at 38.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 44.

the *pro forma* adjustment proposed by WGL is both speculative and unreasonable. The Company presented sufficient evidence of these necessary and proper business expenses. The Company supported its adjustment by initially presenting estimates of these costs from its insurance brokers and subsequently confirming these estimates by presenting actual invoices for these costs. Furthermore, the Commission agrees with the observation in the Proposed Order<sup>20</sup> that the simple fact that WGL has not experienced catastrophic losses in the past is not a basis to stop insuring against such losses in the future.

F. Gain on the Sale of the Company's Headquarters

The Commission concurs with the decision in the Proposed Order to apply the above-the-line treatment to the gain realized by the Company on the sale of its headquarters.<sup>21</sup> The above-the-line treatment of this gain is consistent with Commission precedent. For the reasons stated in the Proposed Order, the Commission also finds that it is reasonable to amortize this gain over fifteen years instead of providing customers with a one time bill credit of \$4,765,914, as proposed by Staff.

In accepting the Hearing Examiner's treatment of this gain, the Commission rejects WGL's request to recognize new, higher operating costs of the transaction. The Hearing Examiner was unwilling to rely on this information, which was first introduced in the rebuttal stage of the proceeding. The Commission declines to disturb the Proposed Order's treatment of this issue. Although the higher operating costs were not utilized, the Hearing Examiner did take notice that the costs were higher in granting a fifteen-year amortization

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<sup>20</sup> *Id.* at 44-45.

<sup>21</sup> *Id.* at 50.

on returning the gain from the sale to ratepayers. This is a substantial benefit to the Company, and, in the Commission's view, is fair to WGL.

The Commission also rejects both OPC's and Staff's requests to modify the Proposed Order to include the additional benefit of carrying costs on the unamortized portion of this gain, since the increased lease expenses are also not being recognized. While the Commission has granted carrying costs in the past when it deemed it appropriate, it does not believe that carrying costs are warranted in this instance.

Finally, the Commission concurs with the Hearing Examiner's conclusion<sup>22</sup> not to institute an investigation of the Company's sale of its headquarters to determine if said sale was prudent. Staff has not presented sufficient evidence in this case to justify the initiation of such an investigation.

#### G. Correction Factors - Revenue

The Commission rejects OPC's challenge to the Proposed Order's acceptance of the Company's proposed revenue correction factors. Correction factors are a means to adjust test-year revenues in order to more accurately reflect a company's fully normalized revenue requirements during the rate-effective period. After review and consideration of the record, the Commission concludes that WGL adequately supported and justified the correction factors to be applied in this case, and therefore accepts the Company's proposal as reasonable.

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<sup>22</sup> Id. at 52.

### III. Rate of Return

#### A. Capital Structure

Based upon the record in this case, the Hearing Examiner found that the capital structure proposed by the Company was reasonable.<sup>23</sup> The Proposed Order noted that the capital structure approved for WGL in its most recent prior rate case included a common equity percentage that was higher than that proposed here, and that the percentage was within the range of the group of comparable companies used by WGL's witness.<sup>24</sup> The Proposed Order also noted the Commission's preference for using a company's actual capital structure (or that projected for the rate-effective period) unless there is clear record evidence that the existing capital structure will unnecessarily burden ratepayers.<sup>25</sup> The Commission affirms the Proposed Order, with one minor change to forecasted retained earnings, and concludes that the capital structure adopted in the Proposed Order is otherwise reasonable for the reasons stated in the Proposed Order.

On appeal, OPC challenges the capital structure determinations made in the Proposed Order on several grounds. First, OPC argues that an amount of long-term debt at the end of the projected period, of approximately \$32 million, should not be removed from rate-making consideration. WGL counters that the current maturities of long-term debt that were eliminated as of the midpoint of the rate-effective period were replaced in part by planned financing that is shown in the cost of debt schedules filed by the Company. WGL's counter argument is consistent with the Hearing Examiner's finding on this issue,

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<sup>23</sup> Id. at 70.

<sup>24</sup> Id. at 69-70.

<sup>25</sup> Id. at 70.

specifically, that WGL included a \$38 million dollar issuance in 2004 to appropriately replace the excluded \$32 million and that the resulting capital structure reflects the capital structure that will exist during the rate-effective period.<sup>26</sup> The Commission affirms the Proposed Order on this point for the reasons stated in the Proposed Order.

OPC also argues on appeal that WGL's common equity balance should be reduced by \$4.898 million because the Company's projected common equity ratio assumes an equity return of 12.25%. WGL agrees that the appropriate return on equity for calculating additions to retained earnings through the end of 2003 should be 10.51%, which is the three-year average return on equity for calendar 2000 through 2002. WGL opposes OPC's proposed adjustment of \$4.898 million as overstated. WGL position is that OPC's proposed adjustment is based upon the difference between a calculation that uses a return on equity of 12.25% and a calculation that uses a 10.51% return on equity. Thus, according to WGL, OPC's adjustment inappropriately uses a return on equity that is above the return on equity adopted in the Proposed Order.

The Commission finds that using the historical three-year average to project retained earnings for the four-month period in dispute is appropriate and accepts OPC's adjustment. Accepting OPC's adjustment makes minor changes to the capital structure, which are incorporated herein.

OPC's final capital structure argument on appeal is that the allowed return on equity should be reduced by 50 basis points since WGL's financial risk profile is lower than that of the companies in the comparison sample group. There is no foundation in the

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<sup>26</sup> Id. at 70.

record for the proposed 50 basis point adjustment; therefore, such an adjustment would be arbitrary. The Commission is not persuaded by OPC's argument and adopts the capital structure relied upon in the Proposed Order, as modified herein. Cost of equity issues are further discussed below.

#### B. Cost of Equity

After examining the evidence and finding certain of the analyses presented during the proceeding to be the most credible estimates of WGL's cost of equity during the rate-effective period, the Hearing Examiner determined that WGL's projected cost of equity capital for the period was 10.75%.<sup>27</sup> The Proposed Order also allowed flotation costs of 25 basis points for a total cost of equity capital of 11%.<sup>28</sup> Flotation costs will be discussed below. The Commission affirms the reasonableness of the 10.75% cost of equity based upon the evidence in the record.

On appeal, OPC raises a series of issues, the net result of which would be to lower the Company's cost of equity to 10.0%. The Commission finds that the Proposed Order's choice of 10.75% is within the range of reasonableness in accordance with the record evidence. The Commission is not prepared to disturb the Proposed Order's recommended 10.75% return on equity finding based upon OPC's argument and the record in this case.

#### C. Flotation Costs

The Commission rejects the Proposed Order's inclusion of 25 basis points for flotation costs in the determination of cost of equity capital. Although the Commission has

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<sup>27</sup> Id. at 75-76.

<sup>28</sup> Id. at 76.

previously allowed for flotation costs in the cost of equity capital determination, flotation costs of any amount should not be added automatically to a cost of equity determination.

Whether to add to cost of equity to cover flotation costs in a particular rate proceeding should be a case-specific determination that examines such issues as the company's capital structure and the circumstances expected during the rate-effective period. In other words, in view of the company's capital structure and the company's capital needs and interest rates expected during the rate-effective period, would it be likely for the company to issue new equity during the rate-effective period such that the company would incur flotation costs? If the answer to this query is yes, flotation costs should be considered.

Based upon the foregoing and upon the equity levels of WGL, the bond ratings of the Company, the low anticipated interest rates, and the scant, if any, record evidence of Company plans to actually issue equity, the Commission finds that the Company is unlikely to issue new equity during the rate-effective period. Accordingly, the Commission rejects the 25 basis point addition to cost of equity included in the Proposed Order, and determines the cost of equity capital for WGL to be 10.75%.

#### IV. Revenue Requirement

In light of the Commission's decisions above, the following table presents the derivation of the overall rate of return:

Washington Gas Light Company				
	Capital (000's)	Ratio	Cost	Weighted Cost
Long-term Debt	\$636,304	41.22%	6.79%	2.80%
Short-term Debt	\$84,312	5.46%	3.24%	0.18%
Preferred Stock	\$28,173	1.83%	4.79%	0.09%
Common Equity	\$794,793	51.49%	10.75%	5.54%
	\$1,543,582	Overall Rate of Return =		8.61%

Application of the revised fair rate of return of 8.61% to the rate base of \$539,628,108 yields a return requirement of \$46,461,980. Subtraction of test-year operating income of \$44,775,781 from this amount results in an operating income deficiency of \$1,686,199, which is \$2,878,594 in terms of annual revenue after adjustment for taxes.

## V. Rate Design

### A. Inter-Class Revenue Allocation (Allocation of Distribution Main Expense)

The Proposed Order found, based upon the record, that a figure of 49 feet of distribution main per customer was a more accurate allocation assumption than the 73 foot figure employed by the Company in its calculations.<sup>29</sup> On appeal, WGL does not ask for a recalculation of the rates that flow from the allocation in the Proposed Order, effectively accepting the result reached in the Proposed Order, but nonetheless asks for a "clarification" from the Commission that states that the Commission rejects the Proposed Order's allocation. The Commission denies WGL's request for clarification. The Commission accepts the Proposed Order's finding because it more appropriately allocates

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<sup>29</sup> Id. at 84, footnote 38.



the cost of distribution main plant by customer class than the distribution main length proposed by WGL.

B. Residential Essential Services Program

The Proposed Order approved the Residential Essential Services Program based upon a finding that the program would provide system-wide benefits to the general body of ratepayers.<sup>30</sup> The Commission is not persuaded that the record in this case provides sufficient basis for that finding and does not accept the Proposed Order's recommendation on this issue. The Commission is concerned, based upon a review of the record, that the Residential Essential Services Program, as proposed, may not satisfy the requirements of PUC § 4-503(b). As proposed, the program appears to redistribute income by applying different rates based solely upon the personal circumstances of individual consumers. (*See, Re Lifeline Rates for Electric Service*, 73 Md. PSC 702 (1982).)

The Commission believes that a program could be designed that provides clear and certain benefits to all ratepayers, while, for example, assisting low-income customers in remaining current on their utility bills. Such a program may benefit all ratepayers because it would reduce the level of uncollectibles and collection expenses of the Company. Another possible feature that could enable the program to overcome the statutory hurdle, would be a program designed to encourage participation in low-income assistance programs such as Maryland Energy Assistance Program ("MEAP") and Universal Service Protection Program ("USPP"). In any event, in order to satisfy the non-discrimination provision of PUC § 4-503(b), any program must have a legitimate, non-discriminatory

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<sup>30</sup> *Id.* at 95.

primary objective that provides a concrete benefit to ratepayers rather than an abstract assertion of benefit, and evidence of this benefit must be in the record.

The Commission's decision not to approve the Residential Essential Services Program is made, however, without prejudice. The Commission hereby docket a proceeding to consider a program, with appropriate modifications and improvements, in greater detail. The modifications suggested on appeal and the three adjustments advocated by OPC during the proceeding, which were recommended for approval in the Proposed Order,<sup>31</sup> should also be considered as part of the new proceeding.

In declining to approve the Residential Essential Services program within this rate case, the Commission is also recognizing a concern that possible changes that it could mandate now might have unforeseen consequences and lead to unfair results. Since the record is not sufficiently developed, the Commission might, for example, mandate a change that resulted in significant increases in costs to the Company such as computer programming costs or additional personnel requirements. In the new proceeding, the feasibility of modifications to the program can be fully explored, including possible enhancements to expand the reach of the program. The Commission directs WGL to file a new proposal in the new case, Commission Case No. 8982, *In the Matter of Washington Gas Light Company's Residential Essential Services Program*, by November 21, 2003. A pre-hearing conference to set the balance of the procedural schedule will be held on November 25, 2003, at 10:00 a.m., in the Commission's 16<sup>th</sup> floor hearing room, 6 Saint Paul Street, Baltimore, Maryland.

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<sup>31</sup> *Id.* at 95-96.

C. Carrying costs on Actual Cost Adjustment (“ACA Balance”)

The Commission also declines to adopt the finding in the Proposed Order<sup>32</sup> that the Company's proposal to accrue carrying costs on purchased gas over- or under-collections, at the cost of short-term debt, is reasonable. The Commission expects carrying costs to balance out over time, and finds that the Company's proposal will place additional burdens upon the regulatory process that outweigh the benefits of the proposal.

The Commission agrees with the Proposed Order,<sup>33</sup> and with Staff, that monthly changes to its Purchased Gas Adjustment factor are an appropriate mechanism to ameliorate the effects of gas price volatility. The Commission clarifies that the Company is authorized to file a tariff change to accomplish the objective of making monthly changes to the Purchased Gas Adjustment factor.

VI. Incentive Rate Plan - Service Quality Standards

The Commission affirms the Proposed Order's rejection of WGL's proposed incentive rate plan, and declines, based upon the record in this particular proceeding, to accept OPC's proposal regarding the implementation of service quality standards at any level at this time.

IT IS, THEREFORE, this 31<sup>st</sup> day of October, in the year Two Thousand and Three, by the Public Service Commission of Maryland,

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<sup>32</sup> Id. at 97.

<sup>33</sup> Id. at 98.

ORDERED: That the Commission hereby adopts the Proposed Order of the Hearing Examiner issued on September 11, 2003, based upon the record and for the reasons stated in the Proposed Order and in this Final Order, with the following exceptions:

1. For the reasons stated in the body of this Final Order,
  - (a) The Commission will not require an earnings test as part of the implementation of the outcome of Case No. 8960;
  - (b) The results of Case No. 8960 must be implemented within a reasonable time-frame and at a minimum no later than July 1, 2004; and
  - (c) The Company is directed to file revised tariff sheets to implement the outcome of Case No. 8960;
2. For the reasons stated in the body of this Final Order, the Commission finds that WGL's common equity balance should be reduced by \$4.898 million;
3. For the reasons stated in the body of this Final Order, the Commission denies any adjustment to the cost of equity for flotation costs in this instance;
4. For the reasons stated in the body of this Final Order,
  - (a) The Commission declines to approve the Residential Essential Services Program at this time, and docket a proceeding, Commission Case No. 8982, *In the Matter of Washington Gas Light Company's Residential Essential Services Program*, to consider the program and the issues;

(b) Washington Gas Light is ordered to make a new filing on the Residential Essential Service Program in Case No. 8982 by November 21, 2003; and

(c) A pre-hearing conference in Case No 8982 is scheduled for November 25, 2003; and

5. The Commission denies the Company's proposal to accrue carrying costs on purchased gas over- and under-collections for the reasons stated in the body of this Final Order, and authorizes the filing of an appropriate tariff to permit monthly changes to the Purchased Gas Adjustment factor.

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Kenneth D. Schisler

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J. Joseph Curran, III \*

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Gail C. McDonald

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Ronald A. Guns

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Harold D. Williams

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\* Commissioner Curran concurs in part and dissents in part, and files a separate opinion regarding the proposed Residential Essential Services Program.

### **DISSENT OF COMMISSIONER J. JOSEPH CURRAN, III**

I concur with the decisions reached regarding the appeals of the Proposed Order with one exception. I dissent from the majority's rejection of the low-income assistance program proposed by the Company.

I applaud the Company for voluntarily proposing its Residential Essential Services program at a time of such volatility in gas commodity prices. It recognizes that many of our citizens will face a significant burden of higher gas prices this winter season. Faced with this reality, WGL is attempting to provide its Maryland low-income customers with the same opportunity for modest, but meaningful assistance that it provides to its District of Columbia customers. I would have preferred that the Commission embrace WGL's initiative rather than take its present course.

The uncontroverted evidence presented by OPC's witness Colton demonstrates that WGL's service territory is experiencing a disproportionate growth in the number of low-income persons with unmet natural gas needs. The dramatic increase in natural gas prices could place an additional hardship upon these citizens in meeting their winter heating payment requirements. WGL correctly realizes that augmenting existing assistance programs is even more critical for this winter season. Moreover, WGL's modest assistance proposal could have not only addressed the needs of low-income citizens, but could have also generated expense savings for the Company. Specifically, it would likely have: (1) reduced credit and collection expenses; (2) reduced cash working capital needs; and (3) reduced bad debt levels. Clearly, these real and tangible savings could have redounded to the benefit of all ratepayers as well as the Company.

While the majority rejected this particular filing, I commend the majority for not shutting the door on this effort. The Commission is requiring the Company to submit a new proposal for our consideration by November 21, 2003. My concern, however, is that any schedule to consider this filing will make it unlikely that a program could be implemented before next winter – thereby failing to address the hardship customers will experience this winter season.

Staff's major concern about WGL's current proposal should be satisfied if WGL structures into any new proposal an incentive mechanism similar to the one developed in 1994 for BGE's Limited Income Customer Incentive Plan. The BGE plan provided incentive payments to participating low-income customers who made timely payment of the amounts due on monthly billings. This incentive mechanism was the central consideration in Staff's recommendation back in 1994 to accept the BGE plan. The timely payment requirement seems to be the main distinction between the previously approved BGE plan and WGL's current proposal. A similar mechanism in any future WGL proposal should alleviate Staff's §4-503(b)(1) concern - just as it did in 1994.

While I am satisfied that the current proposal (as modified by the Hearing Examiner) is conceptually sound and consistent with past Commission precedent, the majority appropriately provides the roadmap to a program that will satisfy the Commission's concerns. Perhaps, some quantitative analysis of the benefits that both the majority and I discuss would be helpful in the approval of the next proposal. Hopefully, Staff, OPC and the Company will seize this invitation to meet prior to WGL's November 21, 2003 filing in an effort to find consensus and collectively design a program to address

immediate needs - remembering that *the perfect should not become the enemy of the good*.

Many important programs that exist today, such as MEAP, EUSP and LIHEAP, have gone through a series of modifications since their infancy in the constant effort to improve their outreach, efficiency and goals. This program should be no exception. In light of natural gas price forecasts for this winter, it is better to have a solid program in place now that can be further refined over time than to refuse action simply because we can not find consensus on the appropriate participation criteria or income eligibility standards.

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J. Joseph Curran, III  
Commissioner

Dated: October 31, 2003